

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35261

BRADLEY SCOTT JACOBS,)	2010 Unpublished Opinion No. 339
)	
Petitioner-Appellant,)	Filed: February 2, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
STATE OF IDAHO,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Respondent.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Latah County. Hon. John R. Stegner, District Judge.

Order summarily dismissing application for post-conviction relief, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rosemary Emory, Deputy Attorney General, Boise, for respondent.

PERRY, Judge Pro Tem

Bradley Scott Jacobs pled guilty to delivery of a controlled substance and was sentenced to a unified term of life imprisonment, with a minimum period of confinement of six years. Jacobs filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court granted. Jacobs's sentence was reduced to thirty years, with a minimum period of confinement of six years. Jacobs appealed from his judgment of conviction and sentence, and this Court affirmed in an unpublished opinion, *State v. Jacobs*, Docket No. 32040 (Jan. 25, 2007). Jacobs filed an application for post-conviction relief, contending that he had received ineffective assistance of counsel, which the district court summarily dismissed. Jacobs appeals.

An application for post-conviction relief initiates a proceeding that is civil in nature. *State v. Bearshield*, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983); *Clark v. State*, 92 Idaho 827, 830, 452 P.2d 54, 57 (1969); *Murray v. State*, 121 Idaho 918, 921, 828 P.2d 1323, 1326 (Ct. App. 1992). Like a plaintiff in a civil action, the applicant must prove by a preponderance of

evidence the allegations upon which the request for post-conviction relief is based. I.C. § 19-4907; *Russell v. State*, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct. App. 1990). An application for post-conviction relief differs from a complaint in an ordinary civil action. An application must contain much more than “a short and plain statement of the claim” that would suffice for a complaint under I.R.C.P. 8(a)(1). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the application. I.C. § 19-4903. In other words, the application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.

Idaho Code Section 19-4906 authorizes summary disposition of an application for post-conviction relief, either pursuant to motion of a party or upon the court’s own initiative. Summary dismissal of an application pursuant to I.C. § 19-4906 is the procedural equivalent of summary judgment under I.R.C.P. 56. Summary dismissal is permissible only when the applicant’s evidence has raised no genuine issue of material fact which, if resolved in the applicant’s favor, would entitle the applicant to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted. *Gonzales v. State*, 120 Idaho 759, 763, 819 P.2d 1159, 1163 (Ct. App. 1991); *Hoover v. State*, 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct. App. 1988); *Ramirez v. State*, 113 Idaho 87, 89, 741 P.2d 374, 376 (Ct. App. 1987). Summary dismissal of an application for post-conviction relief may be appropriate, however, even where the state does not controvert the applicant’s evidence because the court is not required to accept either the applicant’s mere conclusory allegations, unsupported by admissible evidence, or the applicant’s conclusions of law. *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994); *Baruth v. Gardner*, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct. App. 1986).

On review of a dismissal of a post-conviction relief application without an evidentiary hearing, we determine whether a genuine issue of fact exists based on the pleadings, depositions, and admissions together with any affidavits on file. *Ricca v. State*, 124 Idaho 894, 896, 865 P.2d 985, 987 (Ct. App. 1993). In post-conviction actions, the district court, as the trier of fact, is not constrained to draw inferences in favor of the party opposing the motion for summary disposition; rather the district court is free to arrive at the most probable inferences to be drawn

from uncontroverted evidence. *Hayes v. State*, 146 Idaho 353, 355, 195 P.3d 712, 714 (Ct. App. 2008).

A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. *Murray v. State*, 121 Idaho 918, 924-25, 828 P.2d 1323, 1329-30 (Ct. App. 1992). To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct. App. 1995). To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988).

In this case, Jacobs asserted that his counsel was ineffective for failing to seek relief from Jacobs's presentence confinement conditions. Jacobs contended that these conditions were such that they affected his mental state rendering him unable to meaningfully participate in his sentencing. According to Jacobs, had he been able to fully assist in his sentencing and rebut statements in the presentence investigation report, there was a reasonable probability his sentence would have been different. In support of his application Jacobs submitted an affidavit, records from the jail and the criminal proceeding, and articles concerning the potential effects of solitary confinement. The state filed an answer and a motion for summary dismissal with a brief in support of the motion. The state also filed an affidavit of a Latah County jailer with numerous attachments concerning Jacobs's confinement. After a hearing, the district court dismissed Jacobs's application because he failed to establish a genuine issue of material fact that his counsel's performance was deficient and that the result of his sentencing would have been different.

On appeal, and throughout the exhaustive record in this case, Jacobs makes much argument concerning the conditions of his confinement. He argues that the conditions in the jail were so deplorable that they diminished his mental capacity to the point where he could not speak intelligibly on his own behalf at sentencing. Jacobs's application provides numerous attached exhibits. However, all of this presentation misses the mark on the issue raised by his application for post-conviction relief. The relevant inquiry, according to Jacobs's application, is whether trial counsel was ineffective for "failing to seek appropriate relief which would have corrected the inhumane solitary conditions of [his] pre-trial confinement."

Outside of a conclusory allegation, Jacobs's application makes no mention of his attorney's performance and how it fell below an objective standard of reasonableness. Trial counsel's name is only mentioned three times throughout the approximately 170 pages of Jacobs's application and attachments. The application alleges that Jacobs complained to trial counsel about noise, to which trial counsel responded by bringing him earplugs. Jacobs also complains of trial counsel's lack of telephone communication and jail visits.¹ Finally, the application alleges that Jacobs mentioned to trial counsel that he had received papers concerning the custody of his children while in jail. Other than the conclusory allegation on the second page of his application, Jacobs makes no specific allegations detailing how his attorney's performance was deficient. Instead, Jacobs only recounts, at length, the alleged abuse and deprivations to which he was subjected which led to his mental incapacity at sentencing. It does not allege that his counsel was even aware of these alleged conditions or how they allegedly affected Jacobs's mental health. This is not sufficient to raise a genuine issue of material fact that trial counsel's performance was deficient.

Jacobs, as well as the state, also argue concerning whether the alleged jail deprivations occurred during a critical stage of the proceedings requiring Jacobs to be represented by an attorney to assist him in seeking relief from the conditions of his confinement. The state further contends that the proper mechanism for Jacobs to challenge his conditions of confinement was to seek a writ of habeas corpus. The parties also argue concerning the showing of prejudice required by *Estrada v. State*, 143 Idaho 558, 149 P.3d 833 (2006). However, we need not address these arguments because Jacobs's application failed to allege a genuine issue of material fact that trial counsel's performance was deficient for failing to seek appropriate relief from the conditions of pre-trial confinement.

Additionally, Jacobs refers to the articles attached to his application concerning the possible effects of solitary confinement on an inmate's mental state, as well as operating procedures from Guantanamo Bay. Jacobs argues that the state did not contest the substance of these articles. However, even considering the substance of these articles, Jacobs's application provides no admissible evidence that *his* mental condition was affected by being placed in

¹ Although, later in the attachments to Jacobs's application, there is evidence that trial counsel visited Jacobs at the jail on at least twenty-four occasions.

solitary confinement.² Notably missing from his application for post-conviction relief were any medical or psychiatric records detailing his condition. Jacobs's conclusory allegations alone were insufficient to establish a genuine issue of material fact. Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion. Therefore, the district court's order summarily dismissing Jacobs's application for post-conviction relief is affirmed. No costs or attorney fees are awarded on appeal.

Chief Judge LANSING and Judge MELANSON **CONCUR.**

² The affidavit of the jailer in the record states that Jacobs was not actually placed in solitary confinement, but rather a single-person cell.